

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6484 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PAWAN SINGLA & ORS.

Versus

GUJARAT UNIVERSITY

Appearance:

MR GIRISH PATEL for Petitioners

MR NV ANJARIA for MR DS NANAVATI for Respondent No. 1

MR KC SHAH, A.G.P., for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 07/10/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.N.V.Anjaria,
learned Advocate on behalf of Respondent No.1 and Mr. K.
C. SHAH, learned A.G.P., on behalf of respondent No.2.

2. The petitioners, 17 in number, have challenged
the conditions incorporated in their eligibility

Certificates and prayed for following reliefs in this petition under Article 226 of the Constitution of India :

- (i) restraining the respondents from enforcing implementing or taking any action on the basis of the impugned condition and from preventing the petitioners from appearing at the preliminary examination to be held in September, 1996, from filling in the examination form and from appearing at the University examination for first MBBS examination to be held in November, 1996;
- (ii) directing the respondents to allow the petitioners to fill in the examination forms for first MBBS, to appear at the preliminary examination to be held in September, 1996 and to appear at the First MBBS examination of the University to be held in November, 1996;

2. Short facts on which the petitioners have based their claim may briefly be stated :

The petitioners, after clearing their Higher Secondary Certificate Examination and All India Pre-Medical Entrance Examination, 1995, came to be allocated to the B.J.Medical College, Ahmedabad (respondent No.2 herein) for M.B.B.S.Course. They applied for provisional eligibility certificates from the Gujarat University. The same were granted on 25th September, 1995. They were admitted to the first MBBS Course accordingly. It is their case that they have kept three terms by fulfilling all requirements regarding their attendance. However, it is their apprehension that they would not be permitted to appear in the first MBBS Examination which are to be held in November, 1996 only on the ground that a condition is imposed in the provisional eligibility certificates issued to each of them by the Gujarat University (respondent No.1 herein) that they will be permitted to appear at the first MBBS examination only after 18 months. It is their case that such condition cannot be imposed in advance by any authority of the University while granting the eligibility certificate in view of decision of this Court in 1996 (1) G.L.H. 926. They have, therefore, sought for the aforesaid reliefs in this petition. The College actually started functioning from 12.9.1995, whereas the petitioners stood admitted to the college pursuant to the

eligibility Certificates on 26.9.1996. It is, therefore, the case of the petitioners that there is not much difference between the students who got admission to the college which started functioning from 12.9.1995 and the petitioners who started attending their terms from 26.9.1995. The relevant ordinances have been quoted in the petition and the same will be dealt with soon hereafter.

3. It is the stand of the respondents that it was quite legal and proper for the respondents to prescribe a cut-off date for the purpose of students' eligibility. It is the stand of the respondents that the petitioners are estopped from challenging the action of the University in not permitting them to appear at the ensuing examination. The University granted certificate of eligibility since the petitioners agreed to abide by the terms and conditions laid down therein. Such condition has been incorporated in the eligibility certificates and the same would read as under :

"The provisional Eligibility Certificate will be issued by Gujarat University within three months after declaration of result of 1st M.B.B.S. Examination of this University save in cases where Medical Council of India has permitted migration as a special case after considering hard and genuine cases on individual merits."

"The candidate will be allowed to appear in II M.B.B.S. Examination after completion of 18 months from the date of joining in II M.B.B.S. (it should be I M.B.B.S.) Course in this University."

It is the stand of the respondents that it was resolved that the students who were admitted till 12th September 1995 on the commencement of the studies should be considered for grant of the academic term and the students who have joined subsequent to 12th September 1995 have not been considered for grant of the term. According to the respondents the time limit has to be fixed for grant of admission since the University and the College authorities can ill-afford to admit the students till the last day of the closer of the terms. The academic term was to end on 22nd October, 1995. Thus, the decision taken by the college and the university not to consider those students who have sought admission subsequent to 12.9.1995 for grant of term is sought to be justified in the circumstances of the case. The list of students who had obtained their eligibility certificates prior to 12.9.1995 and the students (petitioners herein) who did not obtain their eligibility certificate has been

annexed with the Affidavit in Reply. It is under such circumstances that the Dean of the faculty and the Gujarat University were required to fix some date, beyond which the admission process cannot be carried further, and the students seeking admission later have to suffer for non-granting of the term. Under such circumstances the petition is sought to be dismissed.

4. On being asked Mr.Anjaria, learned Advocate appearing for the respondent No.1 and Mr.K.C.Shah, learned A.G.P. for respondent No.2 have not been able to place on record any decision taken by respondent No.2 with regard to the grant of first term by providing a cut-off date. Therefore on facts it is clear that some decision might have been taken at the respondent No.1 level which has resulted in incorporation of condition noted above in the respective eligibility certificates.

5. I have heard the learned Advocates appearing for the rival parties and the learned A.G.P. for the Respondent No.2.

6. Reference has been made to Ordinance No.70, which would read as under :

"A student migrating from the jurisdiction of another University or statutory examining body and seeking admission to this University shall apply to the Registrar of this University for a certificate of eligibility and shall, at the same time, pay the fees of Rs.30/(thirty only). Such fees shall not be returned if an Eligibility Certificate is issued to the applicant. In case, however, a student to whom the eligibility Certificate has been issued for admission to a particular course of studies desires a change of course for admission to which he is otherwise eligible, he will be required to pay fresh fees. In case where no eligibility Certificate can be issued by the University either because he is not found eligible or he has failed to submit the required document, one-half of the said fee shall be retained by the University and the other half shall be returned. No student from the jurisdiction of another University or the statutory examining body shall be admitted to any institution maintained by or affiliated to the University except on production of Certificate of Eligibility signed by the Registrar or an officer authorised by him of this University in the following form :

CERTIFICATE OF ELIGIBILITY

"Certified that _____
having passed the Examination of the _____
or having passed the _____
Examination of _____ University/Board in
the year 19____ after completing the prescribed
course of instruction at _____ college
which is a college maintained by, or affiliated
to that University is eligible for admission to
the _____ class in this University."

The Registrar may, however, issue a
provisional certificate of eligibility if he is
satisfied that the applicant is prima facie
eligible for admission to this University, at his
own risk, and on condition that he obtains a
final certificate of Eligibility before the close
of the academic term in which the student is
provisionally admitted to the university.

Provided further that if the syndicate is
satisfied that the delay on the part of a student
in applying for an Eligibility Certificate was
not due to any fault of his own, it may, when
granting the Eligibility Certificate, direct that
it shall have retrospective effect from the date
on which the student commenced to attend the
institution to which he applied for admission, so
that the days on which he registered attendance
before the issue of the certificate can be taken
into account for the purpose of Ordinance 78 and
79.

Admissions to Colleges are under the
control of their principals and the grant of an
Eligibility Certificate by the University does
not necessarily confer on the candidate the right
to be admitted to a particular college. The
certificate fee will not be refunded in the event
of the student failing to obtain admission to a
college in this University.

A provisional Certificate to join a
college will be issued only on payment of the
prescribed fee and on production of documentary
evidence such as certificate of passing the
Examination issued either by the Head of the
Institution or the Registrar of the University,
or the Secretary of H. & I. Education Board or

news paper cutting wherein the names of successful candidates are published. When numbers only are published, the Hall ticket or Admission Card must also be produced. The statement of marks will also be accepted."

7. On going through the aforesaid Ordinance it becomes clear that neither the ordinance specifies any conditions to be imposed while granting the eligibility certificates nor the form of certificate of eligibility prescribes any such condition. The discretion which has been conferred by the ordinance is in the Registrar to issue a provisional certificate and not the certificate with a condition as noted above. Hence, it is submitted that there is no power or authority in the respondent No.1 University to impose condition like the one which has been quoted hereinabove while issuing the eligibility certificate. Reference has been made to a decision of this Court in the case of Rohan R. Chauhan V/s. State of Gujarat & ors., reported in 1996 (1) G.L.H. 926 where the following observation appeared, as read by Mr. Patel for the petitioner :

"The provision of Ordinance 70 relates to admission of students from other Universities prescribes a form of eligibility. There is no provision therein for imposing conditions. The topic of the form is only regarding eligibility of the student for admission to a particular class in the University."

It is no doubt true that in Rohan Chauhan's case (supra) the question was regarding cancellation of result of a student who appeared in breach of condition imposed in a provisional eligibility certificate. However, the aforesaid observation of the Court clearly bears the arguments canvassed on behalf of the petitioners. It is, therefore, clear that Ordinance 70 does not prescribe any provision for imposing condition. If that is so the imposition of condition as noted hereinabove would clearly be outside the authority of respondent No.1 University. In reply it has been submitted that it is open to the respondents to follow the provisions of other ordinances in respect of grant of terms. Ordinance 78 prescribes the minimum requirement for attendance necessary for keeping terms and for medicine, pharmacy and Dentistry, the minimum requirement is both for the first term and the second term, 75 % of the total number of working days, provided the student concerned has attended 75 % each of the total number of Lectures, Practicals and clinicals held during the terms. Ordinance 79 deals with short fall in attendance, which

would read as under :

"When on account of bonafide illness, or any other reason deemed sufficient by the Executive Council, the total attendance of a student of an affiliated college in any one term falls short of the minimum required by Ordinance 78, by not more than 20 days, it shall be competent for the Principal to permit a candidate in such a case, to add together the attendance registered by him in two consecutive terms in any one class, provided that the total of the attendance registered in the two terms so counted together amounts to the total required for the minimum attendance of two terms under Ordinance 78; provided nevertheless, that where the deficiency exceeds 20 days in a term or is such that the total attendance registered in the two terms taken together falls short of the total of the minimum attendance of two terms prescribed by O.78 it shall be competent for the Executive Council to condone the deficiency. In the case of a student in the Faculty of Engineering the deficiency in attendance may be condoned by the Principal upto a maximum 30 % in each subject (subject including lectures and practicals together)."

8. Similarly the University has framed Ordinance for various examinations in the faculty of Medicine and Ordinance, M.B.B.S. 3 which would read as under :

"Candidates for the Degree of M.B.B.S.

except those who hold the Diploma of LCPS or the Diploma of MCPS shall be required to undergo a period of certified study extending over 4 academic years. After a period of study extending over 1 1/2 years in the subject specified in O. M.B.B.S. 7 the candidate on the production of the necessary certificates would be entitled to appear for the first MBBS examination. After passing the first MBBS examination a candidate can appear at the Second MBBS examination only after completing the Courses prescribed in O. MBBS. 10 and O. MBBS. 11 and after completing 1 1/2 year. After appearing at the first MBBS examination candidate would be required to spend 3 years in a continuous study of the clinical group of subjects and pass the Second MBBS examination. A candidate for the Third MBBS Examination would be required to spend three years in the continuous study of the clinical group of subjects after

passing First MBBS Examination and must have passed Second MBBS Examination before being admitted to appear in the subjects of Third MBBS Examination, the degree of MBBS shall not be conferred upon a candidate unless he undergoes compulsory housemanship for a period of one year in the manner prescribed in O. MBBS subsequent to his passing in the final examination."

9. It will be clear from the reading of aforesaid Ordinances that the power regarding grant of terms contained in the respective Ordinances is different from the one which would touch the question of eligibility certificate under Ordinance 70. As stated above such power has not been exercised for the purpose of fixation of cut-off date. No decision has been placed on record to substantiate such exercise of authority. In that view of the matter it will be clear that the condition imposed in the respective eligibility certificates of the petitioners will not be justified by the plain reading of Ordinance 70.

10. It has been submitted on behalf of the respondents that the Court can not ask the respondents No.1 in particular, to relax the condition prescribed in the eligibility certificate. Reference has been made to a decision on this Court in the case of Hetalkumar B. Shah V/s. Maharaja Sayajirao University & Anr., reported in 1993 (2) G.L.H. 691. That was a case concerning the autonomous body having its own rules and regulations. On going through the facts of the case before this Court and H.B.Shah's case (supra) it would become clear that the ratio of that decision would not be applicable to the present case.

11. In the above view of the matter the petitioners' case shall have to be considered on the basis that the eligibility certificates which have been issued to them are without the condition as stated hereinabove.

When this petition was placed for first orders the Notice was directed to be issued and petitioners were permitted to take preliminary examination, if any (Coram : Rajesh Balia, J.). Accordingly the petitioners have taken their preliminary examination. The next stage are the declaration of the result of the examination and the petitioners being permitted to appear in the ensuing final examination of the first M.B.B.S. It is, therefore, directed that the condition stated in the respective eligibility certificates of the petitioners for the cut-off date as reproduced hereinabove shall not be implemented and the petitioners shall not be prevented

from appearing in the final examination of the first M.B.B.S. to be held in November, 1996 on the basis of the said condition. If the forms for said examination are not accepted from the petitioners the same may be accepted subject to their fulfilling other requirements for their appearance at the final examination of the first M.B.B.S. to be held as referred to hereinabove.

Rule made absolute accordingly. No order as to costs.

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